

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 535 – SB 726

March 13, 2017

SUMMARY OF ORIGINAL BILL: Creates a process by which a public official, who is identified as a debtor in a filed Uniform Commercial Code financing statement, is authorized to file a notarized affidavit with the Secretary of State (SOS) contesting the financial statement. Creates a process by which the secured party that filed the financing statement may file a petition for review of the public official contest. States that for administrative and rulemaking purposes, the act shall take effect upon becoming law and for all other purposes, the effective date will be October 1, 2017.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue –

Exceeds \$1,100/FY17-18/Administrative Procedures Division

Exceeds \$1,500/FY18-19 and Subsequent Years/

Administrative Procedures Division

Increase State Expenditures - \$60,200/FY17-18/General Fund

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (004873): Deletes the references in the original bill requiring a secured party to file a petition for review by an administrative judge within 10 days of the delivery of an affidavit, and replaces such references with references of 20 days of the delivery. Adds first responder and law enforcement officer to the definition of public official. Adds language requiring the SOS to determine through rule the form in which a \$200 cost bond is required to be paid, and to specify that the cost bond required does not apply to any financial institution that is insured by the Federal Deposit Insurance Corporation (FDIC) or regulated by the Farm Credit Administration (FCA).

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

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Assumptions relative to Public Official Contest Costs:

- Based on information provided by the SOS, a fraudulent lien is a document that claims to describe a lien, which has no legal basis and is based upon false, fictitious, or fraudulent statements or representations.
- Based on information provided by the SOS, even after a fraudulent lien filed against a public official has been terminated by the SOS's office, the information remains on the public official's record.
- This legislation will create a process by which a public official may file an affidavit contesting a fraudulent lien.
- This legislation defines a public official as an individual that is a state, county, metropolitan or municipal employee and is an appointed or elected officer; a head of a division, major unit, or department within an agency or office of the executive, judicial, or legislative branch that provides meaningful input on the development or implementation of policy; or a high-ranking employee within the executive, judicial or legislative branch who has the responsibility for public information and legislative affairs, fiscal, budget, and audit matters, legal, security, or internal affairs, information technology systems; human resources; a first responder; or a law enforcement officer.
- There will be a one-time cost of \$48,000 (480 hours x \$100 per hour) in program coding costs to change the Tennessee Business Entity Annual Report System (TN-BEAR) to process such contests.
- Based on information provided by the SOS, programming coding changes are tested by a contracted business analyst.
- Based on information provided by the SOS, for business services division projects that require coding, business analyst hours are calculated as 30 percent of the program coding hours. For this project, the business analyst hours are calculated at 144 hours (480 hours x 30.0%) at a cost of \$85 per hour.
- There will be a one-time cost of \$12,240 (144 hours x \$85 per hour) for a contracted business analyst assigned to the project to conduct requirement definition and testing.
- The total one-time increase in state expenditures to the General Fund is estimated to be \$60,240 (\$48,000 + \$12,240) in FY17-18.

Assumptions relative to Secured Party Petition of Review Costs:

- This legislation will create a process by which a secured party of record for the financing statement to which the public official affidavit relates may file a petition of review by an administrative law judge.
- This legislation requires that Davidson County be the venue of all cases and permits all or part of a hearing to be conducted by telephone. This legislation will not result in an increase in state expenditures resulting from travel expenses for administrative law judges.
- Based on information provided by SOS, administrative law judges are employed by the Administrative Procedures Division and a rate of \$100 per hour is charged to petitioners for such cases.
- This legislation requires a petition for review to be accompanied by a \$200 cost bond unless the petition is filed by a financial institution that is insured by the FDIC or FCA.

If a cost bond is required, the \$200 will be applied to the total charged to petitioners per hearing.

- It is estimated there will be at least five petitioned cases per year.
- It is estimated each case will last at least three hours resulting in a total charge per hearing of \$300 (\$100 per hour x 3 hours).
- This legislation is effective October 1, 2017 for hearing purposes. This date will make the legislation effective for approximately 75 percent of FY17-18.
- The total increase in state revenue to the Administrative Procedures Division is estimated to exceed \$1,125 [(\$300 hearing charge x 5 hearings) x 75%] in FY17-18; and estimated to exceed \$1,500 (\$300 hearing charge x 5 hearings) in FY18-19 and subsequent years.
- This legislation allows the prevailing party to recover costs and expenses, including reasonable attorneys' fees that are incurred in the review action.
- Based on information provided by SOS, the additional hearings can be heard within existing resources. This legislation will result in no increase in state expenditures resulting from increased case volume.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

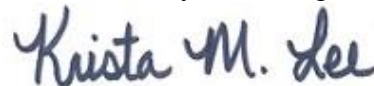
Unchanged from the original fiscal note.

Assumption for the bill as amended:

- Creating a process by which public officials named as a debtor in a filed financial statement may contest the statement and secured parties to petition the contest will not significantly impact jobs or commerce in Tennessee.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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